MICHAEL P. GRACE

IBLA 80-200 Decided September 26, 1980

Appeal from the decision of the Colorado State Office, Bureau of Land Management, terminating noncompetitive oil and gas lease C 099940.

Affirmed.

1. Oil and Gas Leases: Extensions--Oil and Gas Leases: Termination--Oil and Gas Leases: Well Capable of Production

   An oil and gas lease, which is in its extended term because of production, terminates when production ceases unless pursuant to 30 U.S.C. § 226(f) (1976): (1) reworking or drilling operations are begun within 60 days after cessation and are continued with reasonable diligence until production resumes; (2) the Secretary has ordered or consented to suspension of operations or production; or (3) for lands on which there is a well capable of production, the lessee places the well in production within 60 days of receipt of notice to do so.

APPEARANCES: Gary W. Davis, Esq., Martin, Pringle, Fair, Davis & Oliver, Wichita, Kansas, and F. Kimball Joyner, Jr., Esq., Jones, Meiklejohn, Kehl & Lyons, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Michael P. Grace has appealed the decision of the Colorado State Office, Bureau of Land Management (BLM), dated November 7, 1979, terminating noncompetitive oil and gas lease C 099940.

Oil and gas lease C 099940 was issued to appellant effective February 1, 1963, with an original expiration date of January 31, 1973. The lease was extended until January 31, 1977, and "so long

thereafter as oil and gas is produced in paying quantities" under authority of 43 CFR 3107.2-3 which allows extension where actual drilling operations began before the end of the lease's primary term. A Geological Survey (Survey) review of the lease in June 1979 indicated that the Little Brookcliffs No. 1 well on appellant's leasehold had not produced since its completion in February of 1975. Therefore, by letter dated June 22, 1979, Survey notified appellant that he had 60 days in which to make a showing that the well was capable of producing in paying quantities as provided in 43 CFR 3107.3 or the lease would terminate by operation of law. Appellant apparently did not respond.

On September 18, 1979, Survey notified BLM that lease C 099940 was no longer capable of producing oil and/or gas after June 1979, that appellant had not undertaken any operations to restore production within the prescribed 60 days, and that it recommended termination of the lease. BLM then issued the decision appealed from terminating the lease as of midnight June 30, 1979.

In his initial statement of reasons, appellant offered the following arguments:

> 1. Michael P. Grace has drilled a well and made a commercial discovery under the involved lease and such discovery continues said lease in full force and effect. Michael P. Grace has and is exercising every reasonable effort to secure a market for this commercial discovery of gas.
>
> 2. Michael P. Grace has complied with every term and condition of the involved lease and production therefrom has been delayed only because of conditions of force majeure.
>
> 3. The leasehold interest of Michael P. Grace is subject to a proposed incorporation in a unit in which the Mitchell Energies Corporation is the unit operator. The address of the Mitchell Energies Corporation is 1719 Colorado National Bank Building, Denver, Colorado 80202.

In an amended statement of reasons filed with this Board on September 10, 1980, appellant adds that the notice sent to him was defective because it specified the wrong county for the well location, he expended substantial sums in completing the well, and the public interest requires that the well be put into production.

[1] An oil and gas lease in its extended term by reason of production terminates by operation of law when paying production ceases on the lease, subject to three statutory exceptions. John S. Pehar, 41 IBLA 191 (1979); Vern H. Bolinder, 40 IBLA 164 (1979). The applicable statute, 30 U.S.C. § 226(f) (1976), provides that no lease shall

terminate for cessation of production unless: (1) reworking or drilling operations are begun within 60 days after cessation and are continued with reasonable diligence until production resumes; (2) the Secretary of the Interior has ordered or consented to suspension of operations or production; or (3) for lands on which there is a well capable of production, the lessee places the well in production within 60 days after receipt of notice to do so. See 43 CFR 3107.2-1 to 3107.3-1.

Appellant was properly notified to undertake production on his leasehold within 60 days or his lease would terminate. He did not do so. His arguments on appeal are unavailing as a showing of production had to have been made during the specified 60 days. BLM properly terminated oil and gas lease C 099940.

As regards appellant's statement that a commercial discovery exists and that production has been delayed because of conditions of force majeure, we would note that not only has no production been obtained since well completion in 1976, but also that an onsite investigation by an Environmental Scientist on June 7, 1979, "disclosed no pressure on the well head." Appellant has not provided any explanation of in what manner "force majeure" has prevented the placing of a 1976 well into production by June of 1979.

On August 4, 1980, this Board received a communication from Grace Energy which had attached thereto a report on the Little Brookcliffs No. 1 well. All of this data, however, relates to activities which took place in 1975. In the covering letter, the financial planner for Grace Energy stated:

> As you can see by the report, we have spent a great deal of funds in bringing this well into completion. Our operations in Carlsbad, New Mexico had reversed and we were forced to return to Carlsbad and get that field back in order. Once this had been done we returned to Mesa County only to find our lease had been turned back.

While the financial exigencies in which appellant found himself in 1979 are regrettable, they do not constitute "force majeure." We must reject appellant's contentions as unsubstantiated by the record herein.

Leases committed to a unit plan that contains a general provision for allocating oil or gas will continue in effect so long as the lease remains subject to the plan and provided that production in paying quantities occurred prior to the expiration date of the lease. 43 CFR 3107.4-2. Being "subject to a proposed incorporation in a unit" does not bring lease C 099940 within this regulatory provision.

Finally, since the lease was properly identified by number, and the well by section and township, we find the misstatement as to the county of location a harmless error.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Douglas E. Henriques
Administrative Judge